



BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XG561

2019 Annual Determination to Implement the Sea Turtle Observer Requirement

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The National Marine Fisheries Service (NMFS) is providing notification that the agency will not identify additional fisheries to observe on the 2019 Annual Determination (AD), pursuant to its authority under the Endangered Species Act (ESA or Act). Through the AD, NMFS identifies U.S. fisheries operating in the Atlantic Ocean, Gulf of Mexico, and Pacific Ocean that will be required to take observers upon NMFS' request. The purpose of observing identified fisheries is to learn more about sea turtle interactions in a given fishery, evaluate measures to prevent or reduce sea turtle takes, and implement the prohibition against sea turtle takes. Fisheries identified on the 2015 and 2018 ADs (see Table 1) remain on the AD for a 5-year period and are required to carry observers upon NMFS' request until December 31, 2019 and December 31, 2022, respectively.

ADDRESSES: See **SUPPLEMENTARY INFORMATION** for a listing of all Regional Offices.

FOR FURTHER INFORMATION CONTACT: Sara Wissmann, Office of Protected Resources, (301) 427-8402; Ellen Keane, Greater Atlantic Region, (978) 282-8476; Dennis Klemm, Southeast Region, (727) 824-5312; Dan Lawson, West Coast Region, (206) 526-4740; Irene Kelly, Pacific Islands Region, (808) 725-5141. Individuals who use a telecommunications device for the hearing impaired may call the Federal Information Relay Service at 1(800) 877-8339 between 8 a.m. and 4 p.m. Eastern time, Monday through Friday, excluding Federal holidays.

SUPPLEMENTARY INFORMATION:

Availability of Published Materials

Information regarding the Sea Turtle Observer Requirement for Fisheries (72 FR 43176; August 3, 2007) may be obtained online at www.nmfs.noaa.gov/pr/species/turtles/regulations.htm or from any NMFS Regional Office at the addresses listed below:

- NMFS, Greater Atlantic Region, 55 Great Republic Drive, Gloucester, MA 01930;
- NMFS, Southeast Region, 263 13th Avenue South, St. Petersburg, FL 33701;
- NMFS, West Coast Region, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802;
- NMFS, Pacific Islands Region, Protected Resources, 1845 Wasp Blvd., Building 176, Honolulu, HI 96818.

Purpose of the Sea Turtle Observer Requirement

Under the ESA, 16 U.S.C. 1531 *et seq.*, NMFS has the responsibility to implement programs to conserve marine life listed as endangered or threatened. All sea

turtles found in U.S. waters are listed as either endangered or threatened under the ESA. Kemp's ridley (*Lepidochelys kempii*), loggerhead (*Caretta caretta*; North Pacific distinct population segment), leatherback (*Dermochelys coriacea*), green (*Chelonia mydas*; Central West Pacific and Central South Pacific distinct population segments), and hawksbill (*Eretmochelys imbricata*) sea turtles are listed as endangered. Loggerhead (*Caretta caretta*; Northwest Atlantic distinct population segment), green (*Chelonia mydas*; North Atlantic, South Atlantic, Central North Pacific, and East Pacific distinct population segments), and olive ridley (*Lepidochelys olivacea*) sea turtles are listed as threatened, except for breeding colony populations of olive ridleys on the Pacific coast of Mexico, which are listed as endangered. Due to the inability to distinguish between populations of olive ridley turtles away from the nesting beach, NMFS considers these turtles endangered wherever they occur in U.S. waters. While some sea turtle populations have shown signs of recovery, many populations continue to decline.

Incidental take in fishing gear, or bycatch, is the primary anthropogenic source of sea turtle injury and mortality in U.S. waters. Section 9 of the ESA prohibits the take (defined to include harassing, harming, pursuing, hunting, shooting, wounding, killing, trapping, capturing, or collecting or attempting to engage in any such conduct), including incidental take, of endangered sea turtles. Pursuant to section 4(d) of the ESA, NMFS has issued regulations extending the prohibition of take, with exceptions, to threatened sea turtles (50 CFR 223.205 and 223.206). Section 11 of the ESA provides for civil and criminal penalties for anyone who violates the Act or a regulation issued to implement the Act. NMFS may grant exceptions to the take prohibitions with an incidental take statement or an incidental take permit issued pursuant to ESA section 7 or 10,

respectively. To do so, NMFS must determine that the activity that will result in incidental take is not likely to jeopardize the continued existence of the affected listed species. For some Federal fisheries and most state fisheries, NMFS has not granted an exception for incidental takes of sea turtles primarily because we lack information about fishery-sea turtle interactions.

The most effective way for NMFS to learn more about sea turtle-fishery interactions in order to implement the take prohibitions and prevent or minimize take is to place observers aboard fishing vessels. In 2007, NMFS issued a regulation (50 CFR 222.402) establishing procedures to annually identify, pursuant to specified criteria and after notice and opportunity for comment, those fisheries in which the agency intends to place observers (72 FR 43176; August 3, 2007). These regulations specify that NMFS may place observers on U.S. fishing vessels, commercial or recreational, operating in U.S. territorial waters, the U.S. exclusive economic zone (EEZ), or on the high seas, or on vessels that are otherwise subject to the jurisdiction of the United States. Failure to comply with the requirements under this rule may result in enforcement action.

When observers are required, NMFS will pay the direct costs for vessels to carry observers. These include observer salary and insurance costs. NMFS may also evaluate other potential direct costs, should they arise. Once selected, a fishery will be required to carry observers, if requested, for a period of five years without further action by NMFS. This will enable NMFS to develop appropriate observer coverage and sampling protocol to investigate whether, how, when, where, and under what conditions incidental takes are occurring; to evaluate whether existing measures are minimizing or preventing takes; and to implement ESA take prohibitions and conserve turtles.

2019 Annual Determination

Pursuant to 50 CFR 222.402(a), NOAA's Assistant Administrator for Fisheries, in consultation with Regional Administrators and Fisheries Science Center Directors, annually identifies fisheries for inclusion on the AD based on the extent to which:

(1) The fishery operates in the same waters and at the same time as sea turtles are present;

(2) The fishery operates at the same time or prior to elevated sea turtle strandings; or

(3) The fishery uses a gear or technique that is known or likely to result in incidental take of sea turtles based on documented or reported takes in the same or similar fisheries; and

(4) NMFS intends to monitor the fishery and anticipates that it will have the funds to do so.

NMFS is providing notification that the agency is not identifying additional fisheries to observe on the 2019 AD, pursuant to its authority under the ESA. NMFS is not identifying additional fisheries at this time given lack of dedicated resources to implement new observer programs or expand existing observer programs to focus on sea turtles. The 14 fisheries identified on the 2015 AD (see Table 1) remain on the AD for a 5-year period and are therefore required to carry observers upon NMFS' request until December 31, 2019. The two fisheries identified on the 2018 AD (see Table 1) will remain on the AD for a 5-year period and are therefore required to carry observers upon NMFS' request until December 31, 2022.

Table 1. State and Federal Commercial Fisheries included on the 2015 and 2018 Annual Determinations.

Fishery	Years Eligible to Carry Observers
Trawl Fisheries	
Southeastern U.S. Atlantic, Gulf of Mexico shrimp trawl	2015-2019
Gulf of Mexico mixed species fish trawl	2015-2019
Gillnet Fisheries	
California halibut, white seabass and other species set gillnet (>3.5 in mesh)	2015-2019
California yellowtail, barracuda, and white seabass drift gillnet (mesh size >3.5 in. and <14 in.)	2015-2019
Chesapeake Bay inshore gillnet	2015-2019
Long Island inshore gillnet	2015-2019
North Carolina inshore gillnet	2015-2019
Gulf of Mexico gillnet	2015-2019
Mid-Atlantic gillnet	2018-2022
Trap/pot Fisheries	
Atlantic blue crab trap/pot	2015-2019
Atlantic mixed species trap/pot	2015-2019
Northeast/Mid-Atlantic American lobster trap/pot	2015-2019
Pound Net/Weir/Seine Fisheries	
Mid-Atlantic haul/beach seine	2015-2019
Mid-Atlantic menhaden purse seine	2015-2019
Rhode Island floating trap	2015-2019
Gulf of Mexico menhaden purse seine	2018-2022

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